

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 563 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

IMAMMIYA A KURESHI

Versus

STATE OF GUJARAT

Appearance:

MR RM HAKIM for Petitioner

Mrs. B.R. Gajjar, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/02/98

ORAL JUDGEMENT

1. Rule. Mrs. B.R. Gajjar, learned APP waives service of Rule on behalf of Respondent No.1. By the consent of the learned Advocates appearing for the parties, the matter is finally heard today.

2. The petitioner has challenged the legality and

propriety of the Order dated 29.9.1997 passed by Vth Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur, in the proceedings of Session Case No. 137 of 1997.

3. That vide above stated impugned Order, the Sessions Court has rejected the Application Exhibit-2 moved by the present petitioner as accused No.2 of the said Sessions Case No. 137 of 1997 claiming discharge from the offences alleged against him.

4. That the present petitioner along with his son Imtiaz were arrested by the Investigation Officer, Ghatlodia Police Station, Ahmedabad (Rural) in the Criminal Case registered vide I-201/97 at Ghatlodia Police Station on 8.5.1997 for having committed offences made punishable under Sections 363, 366 and 114 of the I.P.C. That according to the prosecution case, one Harmindarsingh had filed complaint that his daughter Hasmit Kaur, aged about 17 years and six months, had gone to collect clothes from laundry on 2.5.1997 and that thereafter she had not returned to the home. Complainant has also stated that his said daughter Hasmit Kaur had one golden chain and golden ring on her body. That the complainant has shown suspicion against son of the present petitioner Imtiaz, who has been running a footwear shop at Jumsan Chamber, Patharkuwa. That said Imtiaz alias Ami Patel used to come at the residence of one Natwarbhai Patel, who has been staying opposite house of the complainant. That the daughter of complainant Hasmit Kaur, being friend of daughter of said Natwarbhai Patel, both of them used to go to purchase chappals at the shop of said Ami Patel alias Imtiaz Ahmad and under such circumstances, said Imtiaz Ahmad - the accused No.1 had developed intimacy with the daughter of the complainant Hasmit Kaur. The complainant has alleged that said Imtiaz Ahmad has enticed his daughter Hasmit Kaur with intention to enter into marriage with her or to commit sexual intercourse. That Imtiaz Ahmad has kidnapped said Hasmit Kaur from the guardianship of the complainant, and as such, he committed the offence.

5. It is also the case of the prosecution that present petitioner, who is the father of accused No.1 Imtiaz, was also arrested on 8.5.1997 on the allegation that having provided money to his son to commit the said offence of kidnapping, he has abated. That thereafter petitioner was released on bail by the Sessions Court. That on completion of the investigation, the Ghatlodia Police Station has filed the charge sheet in the Sessions Court at Ahmedabad District, which is registered as Sessions Case No. 137 of 1997.

6. The petitioner has contended in the present petition that initially he was serving as X-Ray Technician at Civil Hospital, Ahmedabad. That during 8.5.1997 to 15.5.1997, he was serving at Sabarmati Central Jail and as he is involved in a criminal case, under the Government Rules and Regulations, he is suspended vide order dated 8.5.1997. Further more, he has retired from his service on 30th September, 1997. That on account of pending Sessions Case against the petitioner, he is deprived of his retiral benefits and thereby the petitioner moved an application - Exhibit 2 dated 27.9.1997 in the court of Vth Extra Assistant Judge, Ahmedabad Rural at Mirzapur, District Ahmedabad, claiming discharge from the offences alleged against him in the charge sheet.

7. That the learned Extra Assistant Judge has decided the application vide Order dated 29.9.1997 and as stated hereinabove, rejected the same.

8. Learned A.P.P. Mrs. B.R. Gajjar has shown to me the police papers attached with the charge sheet and produced in the court and has contended that the complainant in his further statement has stated before the police that present petitioner as accused No.2 of the said Sessions Case had paid an amount of Rs. 25,000/- to his son the accused No.1 in order to facilitate him to commit the offence. Not only that, the wife of the present petitioner has also stated in her statement recorded by the Investigation Officer to the effect that on 2nd May, 1997, in the evening, his son Imtiaz had come to the residence and had taken his father to the shop for some work. That at night, when the petitioner had returned from the shop, on her inquiry, the petitioner had told her that Hasmit Kaur had come to the shop and said that she wanted to marry Imtiaz. That despite his advise, the girl has refused to go to her parents and had shown apprehension that her father might kill her. Under such circumstances, he had paid Rs. 25,000/- and the girl had gone. However, he does not know where they had gone. That despite further inquiry, the petitioner has not stated anything further. That the said statement along with the further statement of the complainant provide material to show that there is sufficient ground to proceed against petitioner for the charges alleged in the charge sheet filed and thereby the learned Extra Assistant Judge has rightly rejected the application of the petitioner claiming discharge.

9. Learned APP has also taken me through the

impugned order produced on record vide page 18 to 23. On perusal of the order, it appears that though the judgment in the matter of NIRANJANSINGH KARAMSINGH PUNJABI vs. JITENDRA BHIMRAJ, reported in AIR 1990 SC 1962 was cited before the Sessions Court. The court has construed the observation made by the Supreme Court in different perspective. It is observed by the Sessions Judge that the said statement of the wife of the present petitioner has not been produced by the Investigating Agency along with the charge sheet and the wife of the petitioner has not been cited as witness. However, the learned Sessions Judge appears to have been carried away with the submission made on behalf of the prosecution that had petitioner not paid money to his son, his son could not have committed the offence. That the act of making payment to his son amounts to an offence of abatement and, therefore, there is prima facie case against the petitioner.

10. On close scrutiny of material produced on record, it appears that the learned Sessions Judge has committed an error while applying the test settled by the Supreme Court and observed in the case of Nirajansingh (supra). That even accepting the material produced before the trial court as evidence of prosecution without being tested by cross-examination and the rebuttal of defence, the facts and circumstances emerging from the said material; does not provide sufficient ground to proceed against the petitioner as accused No.2; for the offences alleged in the charge sheet.

11. Learned APP Mrs. B.R. Gajjar further contended that one of the offence charged against the petitioner as accused No.2 being a continuous offence. The payment made by the petitioner to his son should be construed as an act of abatement for continuous offence. The submission though attractive could hardly be accepted because said statement has not been placed on record along with charge sheet by the Investigating Agency and further more the statement itself suggests that the wife of the petitioner was not told anything further.

12. On the basis of the above stated discussion, I hold that the trial court ought to have held that there is no sufficient ground on the material produced on record along with the charge sheet to proceed against the present petitioner who is accused No.2 and as such application claiming discharge ought to have been allowed. In the result, the Revision Application No. 563 of 1997 is allowed. The order passed by the learned Vth Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur,

District Ahmedabad on 29.9.1997 in Sessions Case No. 137 of 1997 rejecting the application of the present petitioner claiming discharge from the offence alleged against him is hereby set aside and quashed. That present petitioner as accused No.2 of Sessions Case No.137 of 1997 is discharged from the offence alleged against him. Rule is made absolute accordingly. In the facts and circumstances of the case, no order as to costs.

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